

REMARKS

Favorable reconsideration is respectfully requested in view of the foregoing amendments and the following remarks.

I. CLAIM STATUS AND AMENDMENTS

Claims 1-10 were pending in this application when last examined.

Claims 1-10 were examined on the merits and stand rejected.

Claim 6 is cancelled without prejudice or disclaimer thereto. Applicants reserve the right to file a Continuation or Divisional Application on any cancelled subject matter.

Claim 1 is amended to incorporate the limitations of claim 6.

No new matter has been added.

II. ANTICIPATION/OBVIOUSNESS REJECTIONS

In item 4 on pages 2-4 of the Office Action, claims 1 and 4 were rejected under 35 U.S.C. § 102(b) as anticipated by Miyamoto et al. (US 6,197,574).

Claim 1, the only independent claim, has been amended to recite the limitations of claim 6. Claim 6 was not subject to this rejection. Thus, this rejection, as applied to the amended claims, is overcome.

Further, in item 6 on pages 4-7 of the Office Action, claims 2, 3, 5 and 8-10 were rejected under 35 U.S.C. § 103(a) as obvious over Miyamoto et al. in view of Nason (US 5,266,266).

As noted above, claim 1 is amended to include the limitations of claim 6. Claim 6 was not subject to this rejection. Thus, this rejection is overcome, as applied to the amended claims.

Finally, in item 7 on page 7 of the Office Action, claims 6 and 7 were rejected under 35 U.S.C. § 103(a) as obvious over Miyamoto in view of Nason and further in view of Matkovich (US 4,731,061).

Applicants respectfully traverse this rejection as applied to the amended claims.

A. Miyamoto et al. (US 6,197,574)

Miyamoto et al. merely discloses a double-walled tubular bacterium detector enclosing not only a culture medium-filled ampule (4, 244 and 744) but also a disinfectant-filled ampule

(8, 248 and 748) inside the exterior bodies (i.e., tubes 2, 243, 247, 743 and 747) as shown in Figures 1, 18 and 35.

Miyamoto et al. fails to teach or suggest the unique features and structures of the claimed detector wherein neither a culture-medium-filled ampule or a disinfectant (or germicide)-filled ampule are necessary.

In the claimed detector, all constituent members can be formed of plastics wherein a room (23) inside the hollow container (21) can be successively and securely supplied in a simple manner with the culture medium and then with the disinfectant (or germicide) while the entire device is completely hermetically sealed. This is in contrast to the invention of Miyamoto et al., which requires three separate parts, two ampules and an outside structure for securing the ampules.

As apparent from paragraph [0034] of US 2007/0249040, the claimed detector has highly simplified constituent members. The claimed detector can be discarded or incinerated without segregation of waste. In addition, manufacturing costs and waste disposal expenses can be remarkably reduced. Once a sample has been collected, the process for the detection can be performed in a completely closed system, which is especially important when handling toxic food-poisoning bacteria.

As pointed out in paragraph [0091] of US 2007/0249040, the claimed detector is a remarkably safer device because it reduces the risk of leakage of contents from the joining parts and movable parts of each constituent member. Since the structures of the constituent members are simplified and the number of the constituent members is reduced, the manufacturing cost can be significantly lowered and security can be effectively improved.

Finally, it is noted that the device of Miyamoto et al. fails to teach or suggest a first or second opening-forming means in the partition members. It is noted that the walls of the ampules are not the partition members in Miyamoto et al. but instead parts 5 and 15 could be reasonably seen as the partition members. Also, it is noted that the independent chambers for liquid of claim 1 are formed of the partition members and a wall portion of the cap body. Such is not taught or suggested by Miyomoto et al.

Thus, the configurations and appearances of the devices described in Miyamoto et al. is completely different from those of the claimed invention. Therefore, Miyamoto et al. does not lead to the conception of the subject matter as set forth in the present application.

B. Nason (US 5,266,266)

Nason is not related to a technique for handling toxic food-poisoning bacteria wherein special care is required.

Further, Nason fails to disclose or suggest a device enclosing two kinds of liquids in one container. In addition, Nason is completely silent on a technique for supplying each of two liquids into a room of one container successively and securely in a state that the entire device is completely hermetically sealed.

The configurations and appearances of the devices described in Nason are completely distinct from those of the claimed detector.

Finally, it is noted that amended claim 1 requires a cross section of the stick-like protrusion provided for the first opening-forming means, cut in a plane perpendicular to the axis of the bacteria detector and has a shape wherein the vertical length is unequal to the horizontal length.

Therefore, a person of skill in the art would not have any motivation to combine Miyamoto et al. with Nason and the advantageous features and efficacies achieved by the claimed invention is not obvious from Miyamoto et al. in view of Nason.

C. Matkovich (US 4,731,061)

Similar to Nason, Matkovich is not related to the technique for handling toxic food-poisoning bacteria wherein special care is required.

Further, Matkovich fails to disclose or suggest a device enclosing two kinds of liquids in one container. In addition, Matkovich does not teach or suggest a technique for supplying one liquid and then another liquid into a room of one container successively and securely in a state that the entire device is completely hermetically sealed.

The configurations and appearances of the devices of Matkovich are also completely different from those of the claimed detector.

Applicants further note that Matkovich is directed towards flow of liquids an administration kit and not towards culturing of toxic food-poisoning bacteria. Thus, a person of skill in the art would not look to the teachings of Matkovich in order to obtain the claimed invention.

Therefore, a person of skill in the art would not have any motivation to combine Miyamoto et al. with Nason and Matkovich.

In the claimed detector, the element “a cross section of the stick-like protrusion ... has a shape wherein the vertical length is unequal to the horizontal one” is remarkably advantageous, as described in paragraph [0083] of US 2007/0249040. The unique features and advantages obtained by the claimed detector are described below:

- (1) operations can be done in a very simple manner without requiring any skill under conditions wherein the whole of the detector is completely hermetically sealed once a test sample has been collected;
- (2) the claimed detector has a highly simplified and secure configuration and can be formed by simplified constituent members;
- (3) the used detector of the claimed invention can be conveniently discarded and incinerated without segregation of waste; and
- (4) since the structures of the constituent members are simplified and the number of constituent members is reduced (see Figure 2 of US 2007/0249040), manufacturing cost can be remarkably reduced and security can be significantly improved.

For the above-noted reasons, this rejection is untenable and should be withdrawn.

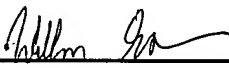
CONCLUSION

In view of the foregoing amendments and remarks, it is respectfully submitted that the present application is in condition for allowance and early notice to that effect is hereby requested.

If the Examiner has any comments or proposals for expediting prosecution, please contact the undersigned attorney at the telephone number below.

Respectfully submitted,

Toshihiko MIYAMOTO et al.

By: 

William R. Schmidt, II
Registration No. 58,327
Attorney for Applicants

WRS/lc
Washington, D.C. 20006-1021
Telephone (202) 721-8200
Facsimile (202) 721-8250
November 26, 2008